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U.S. DISTRICT COURT E.D.N.Y.
★ APR 27 2017 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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LUIS I. BELVIS, RAUL F. DE LEON, and CYD RICH C. RECENTE,

Plaintiffs,

– against –

RALPH COLAMUSSI, HISTORICAL THATCHED COTTAGE CATERERS, INC., JOE'S FRIENDLY SERVICES & SON, INC., d/b/a HISTORICAL THATCHED COTTAGE, and ROBERTO VILLANUEVA

Defendants.

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ORDER
CV 16-544 (JFB) (ARL)

JOSEPH F. BIANCO, District Judge:

On February 3, 2016, plaintiffs filed a complaint in this action. Defendants Ralph Colamussi, Historical Thatched Cottage Caterers, Inc., and Joe's Friendly Services & Son, Inc. ("defendants") were served on March 5, 2016. On January 31, 2017, plaintiffs requested a certificate of default against defendants. On February 13, 2017, plaintiffs renewed their request for a certificate of default. On February 14, 2017, the Clerk of the Court noted defendants' default. On March 13, 2017, plaintiffs filed a motion for default judgment. By order dated March 20, 2017, the Court ordered defendants to respond in writing within fourteen days explaining why default judgment should not be entered, explicitly warning defendants that a failure to respond would result in entry of default judgment. Plaintiff served this order on defendants on March 23, 2017. To date, defendants have not answered or otherwise appeared in this action. Therefore, IT IS HEREBY ORDERED that plaintiffs' motion for default judgment is granted.

To obtain damages related to a default judgment, "a plaintiff must present admissible evidentiary proof of his alleged damages, unless the claimed amount is liquidated or susceptible to mathematical calculation." *In re Suprema Specialties, Inc.*, 330 B.R. 40, 54-55 (S.D.N.Y. 2005) (citing *SEC v. Mgmt. Dynamics*, 515 F.2d 801, 814 (2d Cir.1975) ("[U]nless the amount of damages are absolutely certain, the court is required to make an independent determination of the sum to be awarded."). Rule 55(b)(2) permits a court to conduct a hearing "as it deems necessary and proper" to calculate damages, "vesting considerable discretion in the court to establish the procedures appropriate to the particular case." *Id.* at 55. However, a hearing is not necessary "as long as [the court] ensure[s] that there [is] a basis for the damages specified in a default judgment." *Fustok v. ContiCommodity Servs.*, Inc., 873 F.2d 38, 40 (2d Cir.1989).

IT IS HEREBY ORDERED that the Court refers this matter to Magistrate Judge Lindsey for a Report and Recommendation to address the issue of damages and other relief sought by plaintiffs.

IT IS FURTHER ORDERED that counsel for plaintiffs shall serve a copy of this Order on defendants and file an affidavit of service with the Court.

SO ORDERED.

Joseph Bianco

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: April 27, 2017
Central Islip, New York